In my opinion the defence should not have been called upon, and accordingly the learned District Judge's comments on the weakness of the defence are irrelevant.

Where an Ordinance with penal provisions is defective, it is for the legislature to remedy the matter. The Courts can only interpret the law as it stands.

The appeal therefore was allowed, the fine remitted and the applicant, who was in custody, discharged.

Appeal Allowed.

Solicitor for appellant:—*K. P. K. Menon.*

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 4 & 7, 1937.

REX v. LEE WHOY KWOI.

[SINGAPORE MAGISTRATE'S APPEAL No. 68 of 1937]

Women & Girls' Protection Ordinance (Cap. 33) Section 6—living on earnings of prostitution —presumption—onus of proof—uncorroborated evidence of prostitute—Court's discretion in accepting.

Where it is proved that a woman is a prostitute and that the accused is living with her a rebuttable presumption arises under Section 6 (3) of the Women & Girls' Protection Ordinance that the accused is knowingly living on the earnings of prostitution. It is not necessary to prove any receipt of the earnings but it is essential for the accused in such a case to show that neither wholly nor in part is he dependent for his livelihood upon her immoral earnings.

Where the only evidence of prostitution rests on the testimony of the woman with whom the accused is said to have lived, such evidence may be accepted without any corroboration but it is always in the discretion of the Court to require corroboration. Where the conviction will rest upon the direct testimony of the woman alone, then, should there be any circumstances to impeach her credibility, the Court should look with extreme care at those circumstances as elements of doubt.

The accused kept as mistress a woman who had previously been a prostitute. Evidence was led showing that throughout the time that they had been living together the accused earned sufficient or more than sufficient for his own support and that, admittedly, for a part of that time he had supported his mistress. The woman, however, alleged that during the period, January to June 1936, she gave him small sums daily. On the contrary, the accused testified that he had supported the woman and had tried to prevent her leaving the lodgings. The accused was convicted by the District Judge.

On appeal to the High Court against the conviction;

Held, applying the principles above enunciated, that the verdict was against the weight of evidence and therefore the conviction must be set aside.

The facts and arguments sufficiently appear from the judgment below.

MAGISTRATE'S APPEAL.

Morrison for the appellant.

Storr, Crown Counsel, for the Crown.

The appeal was heard before Mr. Justice Horne on the 4th of September 1937. The learned Judge delivered an oral judgment allowing the appeal and, on further consideration, gave his reasons for judgment on the 7th September, 1937.

Cur. Ad. Vult.

HORNE, J.—First it is necessary to establish that at the time of the charge the woman is practising her profession as a prostitute. Secondly that the accused is living with the woman. The onus then shifts to the accused to show that he is not knowingly living wholly or in part on the earnings of prostitution.

There are certain undisputed facts, viz., that the woman was a prostitute and then agreed to give up that life and live with the accused as his mistress, and that they did live together at 14 Ann Siang Hill.

Of course it is a dangerous thing for a man to associate with a former prostitute.

It is somewhat more difficult to establish as to what a kind of a life she lived there. For a time it is agreed by the man and the woman, that the man worked and earned money. Nevertheless we find the woman keeping a maid, an amah, which hardly appears essential.

There is evidence that the man was in employment and earned money. It is entirely between the man and the woman as to whether he gave those earnings to the woman and thus maintained her as he declares. In fact it is difficult to find any direct evidence of what the arrangements were between them other than their own statements which are mutually contradictory.

She says she is a prostitute, while he declares that he has tried to prevent her being a prostitute. And the question whether she gave him money and food, if it is decided against the accused, has to be decided upon her evidence alone.

There is no rule of law which forbids a conviction in this class of case upon the uncorroborated testimony of the woman concerned. Nor is there a rule that the Court must warn itself or the jury of the danger of convicting on such evidence. The matter appears to be entirely within the discretion of the Court, which may presume, if the circumstances of the case appear to justify it in so doing, that the evidence of a person who is leading a life of prostitution is unworthy of credit.

I would only add that in my own opinion, corroboration should almost invariably be required when the trial of such grave charges is held before a single judge or magistrate.

In the present case the District Judge accepted the woman's testimony as against that of the accused in every material point. And I do not propose to interfere with such findings of fact as that the woman was a prostitute and that he was living with her.

It being established therefore that the woman was at the material time a prostitute and that the accused was living with her, the question of the presumption under subsection 3 falls to be considered. Mr. Morrison submits that the proof of the two facts, prostitution and cohabitation, only relieves the prosecution from proving the defendant's knowledge. They must also prove the receipt of the earnings. That seems all that is left to prove.

But, in my opinion, the wording of this subsection throws an onus on the accused of showing that, although the woman is a prostitute and he is associating with her he receives nothing of a pecuniary nature from her.

That is he is compelled to prove a negative allegation when circumstances pointing to the contrary are proved to exist.

Consequently great care is required in examining the evidence in such cases.

The charge is living in part upon the earnings of prostitution of Ning Poh Choo. So the presumption is knowingly living in part.

Now it is entirely his word against hers as to whether he, though she is a prostitute and though he is living in the same house, receives money from her for support.

And although the onus is upon him to show that he does not do so, can it be said that he has not satisfied that onus by his evidence, when on that point it is only contradicted by the woman who is admittedly of an infamous character?

In my opinion the Court should have accepted his evidence on this crucial point against that of the woman, especially when there is no corroboration of her story that she has in fact been prostituting herself over a lengthy period.

Accordingly, I think the verdict is, for the reasons given, against the weight of evidence on the whole. The more serious the charge, the more the scales are loaded against an accused person, the more certain should be the proof. It is necessary that they should be so loaded in this class of case. But where the proof depends upon whether the evidence of the accused or the evidence of the complainant should be accepted then, I think, the Court should require that the evidence of the party accepted should be, if not beyond question, at least preferable to that of the other party.

On the 7th September, 1937 his Lordship delivered the following judgment on further consideration:—

The character of the presumption which arises upon proof that the woman is a prostitute and that the accused is living with her requires careful examination. Is it a presumption of fact or a presumption of law? The material words of the section are "he shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution."

There is something to be said for Mr. Morrison's contention that the word 'knowingly' is the controlling or the qualifying word in this phrase. If that is so the onus of proof of the receipt of something in money or kind would have still to be established by the prosecution before the presumption, whatever its character, may be said to arise.

The contrary view is that on the two facts being established, it is not necessary to prove any receipt of earnings by the accused and that it then falls to the accused to show that as he resides with an active prostitute he must show that neither wholly nor in part is he dependent for his livelihood upon her immoral earnings.

This latter view is, in my opinion, correct. Apart from the subsection, on proof of the two facts, prostitution and residence or cohabitation, there would arise a probable presumption of fact that the man was living on the earnings of prostitution. But where a statute enacts that something shall be deemed to exist, which might probably have been presumed to exist, it does not necessarily follow that it does exist. The words interpolated "in the absence of proof to the contrary" without saying on whom the burden of contrary proof is cast must also be considered. Certainly no *conclusive* presumptoin of law arises. At the most it is a *disputable* presumption of law. In other words the presumption of innocence is to be displaced upon proof of certain facts. The wording, it is to be noted, is different from the older ordinance which definitely throws the burden of proof to the contrary upon the accused. Ordinarily the presumption of innocence, which is itself a disputable presumption of law, is rebutted by proof of acts tending to show guilt. The facts which would ordinarily shew the guilt of the accused are knowledge of the source of the earnings and the receipt of some of them in such amount as to form wholly or in part the support of the receiver. But the subsection goes further and says that where the male is *proved* to live with the prostitute he shall be deemed to be knowingly living on her immoral earnings. The fact and the knowledge are to be deemed to exist in effect; he is to be deemed to be guilty of the offence in absence of proof to the contrary. He may himself

supply or attempt to supply such proof or rely on the evidence given in support of the charge, to show that the presumption does not arise.

If, therefore, a certain class of evidence is accepted as proof of the fact (a) that the woman is a prostitute, and (b) that the accused lived with her; then no higher quality of evidence should be required from the accused in rebuttal of the presumption which has so arisen against him. It is conceded by the prosecution in this case that there is no other evidence of the fact of prostitution during the period of the charge than that of the woman herself. Such evidence may be accepted without any corroboration, but it is always in the discretion of a Court to require corroboration (section 115 Evidence Ordinance); and in my view, a judge or magistrate sitting alone, without jury or assessors, is placed in a very difficult position, when called upon to say whether he should accept evidence from *tainted or dangerous sources* in the absence of corroboration.

The presumption having been held by the District Judge to arise it is necessary to consider what evidence there was of proof to the contrary. If, as I have indicated, the presumption is held to arise on the sole testimony of the woman, that is if it arises on a weak case, then it is not to be demanded of an accused person that the proof to the contrary should be overwhelmingly strong.

In this case evidence was led showing that the woman about a year ago had been a prostitute and that since that time she had lived with the accused as his mistress, that he had throughout the greater part of the time earnt sufficient or more than sufficient to support himself and that admittedly for a part of the time of their cohabitation he had supported his mistress. During the period January to June 1936 the woman alleged that she gave the man small sums daily, while on the other hand, evidence was led by the prosecution shewing that the man was in employment; while he stated that he had supported the woman and had tried to prevent her leaving the lodgings.

The question whether or not there was no proof to the contrary fell therefore to be decided simply upon how far the woman's evidence was, in the light of the circumstances, capable of being accepted in the sense that the guilt of the accused was not left as a mere balance of probabilities, but as established. In other words, was the presumption of guilt so strong that the evidence both of employment, and the cause of and the continuance of the accused's association with the woman of no value at all in rebutting that presumption, especially when the nature of the evidence which is accepted as raising the presumption is taken into account.

Clearly upon a comparison between her original complaint and her evidence in Court and upon consideration of her answers in cross-examination the woman cannot be accepted as an entirely satisfactory witness. Accepting her evidence without corroboration as establishing the presumption under subsection 3, which presumption is a disputable presumption in law, is one thing; accepting it as rebutting the evidence of the accused or the evidence of other witnesses which tend to show proof to the contrary is another. Because the rule is that where the conviction will rest upon, as it does here, the direct testimony of the woman alone; then, should there be any circumstances to impeach her credibility, the Court should look with extreme care at those circumstances as elements of doubt; *R.* v. *White*, 4 F. & F. 383.

The subsection 3 only raises a disputable presumption and if there is evidence disputing it, it cannot be said that it has become a conclusive presumption. Once there is evidence disputing the presumption, the prosecution is thrown back to its original duty of proving the case.

In this case the conviction appears to have proceeded upon a balance of probabilities which in the circumstances of the case—a criminal case —is wrong.

Appeal Allowed.

Solicitor for the Appellant—*Mark Morrison.*

[COURT OF CRIMINAL APPEAL]

TERRELL, Ag. C.J. CUSSEN, J. & LAVILLE, Ag. J.

September 22, 1937.

REX v. KAVENA ISMAIL SAHIB.

[SINGAPORE CRIMINAL APPEAL No. 6 of 1937]

Use of Chettiar vilasam—Presumptions therefrom.

Observations on the effect of the use of a Chettiar vilasam together with and as as part of the name of an individual chettiar.

The firm of R.M.K.R.M. v. *the firm of M.E.M.V.L.*, (1926) A.C. 61 commented upon.

CRIMINAL APPEAL.

Dr. Withers-Payne, for appellant.

Storr, Crown Counsel for respondent.

The facts and arguments appear sufficiently from the judgment.

The judgment of the Court (**TERRELL AG. C.J., CUSSEN J.**, and **LAVILLE AG. J.**) was delivered by—

TERRELL, AG. C.J.—The appellant was charged with criminal breach of trust in respect